

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 18 2015

SC Court of Appeals

Appeal from Kershaw County
The Honorable James R. Barber, III, Circuit Court Judge
Case No. 2014-002425

THE STATE, RESPONDENT

v.

ANNETTA GRANT APPELLANT

FINAL BRIEF OF RESPONDENT

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ATTORNEY FOR THE RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The issue is procedurally barred because it was not ruled upon by the trial judge.

Pre-trial detention was ordered by the initial plea judge for the Department of Corrections to calculate, and therefore should not have been addressed at the probation violation hearing.

STATEMENT OF THE CASE

Appellant pled guilty to two separate indictments in Kershaw County before the Honorable Judge R. Ferrell Cothran on March 6, 2014. The Appellant was sentenced on each offense to four years in prison suspended on time served and eighteen months of probation. On indictment 2014-GS-28-0238, an offense of Breach of Trust with Fraudulent Intent with a value between \$2,000 and \$10,000, Judge Cothran ordered her to receive credit for time served pursuant to S.C. Code Section 24-13-40. On indictment 2012-GS-28-0547, an offense of Forgery less than \$10,000, Judge Cothran ordered her to receive credit for 133 days time served pursuant to Section 24-13-40. (R.p.11-p.12).

Following being placed on probation, the Appellant failed to report or comply with any of the conditions of probation. (R.p.14-p.15). The Department issued a warrant on July 1, 2014, for violating her probation. (R.p.16-p.17).

On November 6, 2014, Appellant appeared before the Honorable James R. Barber for a probation revocation hearing. The Appellant admitted her violations. (R.p. 4, ll. 10-14). The Appellant's attorney stated that prior to her plea before Judge Cothran she had served 365 days in Georgia on a South Carolina hold. (R.p. 6, ll. 22-p. 7, ll. 1). Judge Barber revoked four years, and gave her credit for the time she served on the probation violation warrant. (R.p. 8, ll. 1-10).

ARGUMENT

The issue is procedurally barred because it was not ruled upon by the trial judge.

The judge in this issue did not make a ruling on the request to apply time for the Appellant's Georgia incarceration.

“An issue must be raised to and ruled upon by the trial judge to be preserved for appellate review” *State v. Lee*, 350 S.C. 125, 130, 564 S.E.2d 372, 375 (S.C.App., 2002), citing *State v. Perez*, 334 S.C. 563, 514 S.E.2d 754 (1999) and *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991).

Although the Appellant's attorney explained she served a year in Georgia on a South Carolina hold, and requested she receive that time toward her offense, the trial court did not make a ruling. Instead, the court gave the Appellant credit for the time she served on the probation warrant and remained silent on the issue of the Georgia time.

Consequently, without a ruling on the motion, the issue was not preserved for appellate review.

Pre-trial detention was ordered by the initial plea judge for the Department of Corrections to calculate, and therefore should not have been addressed at the probation violation hearing.

Appellant claims that the court erred when it did not grant the Georgia time to Appellant at her violation hearing.

However, the court at her plea did in fact order that credit for pre-trial detention be awarded pursuant to S.C. Code Section 24-13-40. (R.p.11-p.12). The trial court did not err because that matter was properly taken up at the time of the plea, and was not for the probation violation court to consider.

Instead, the proper venue for whether the Appellant should receive her time while incarcerated in Georgia is the Administrative Law Court.

The ALC's jurisdiction is derived from the decision of the South Carolina Supreme Court in *Al-Shabbaz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabbaz*, the Supreme Court of South Carolina created a new avenue by which inmates could seek review of some final decisions of a state agency in non-collateral matters related to a conviction and sentence, i.e. matters in which an inmate does not challenge the validity of a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC and ultimately the Court of Appeals pursuant to the Administrative Procedures Act. *Al-Shabbaz*, at 376.

In *Al-Shabbaz*, the Court recognized that these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. *Id.*, at 376.

In the South Carolina Department of Corrections, inmates have a multi-step process in which they may file grievances about their sentence calculations. *See Tant v. South Carolina Dept. of Corrections*, 408 S.C. 334, 339, 759 S.E.2d 398, 400, (2014). Upon a final decision by the Department of Corrections, the inmate can then appeal to the Administrative Law Court.

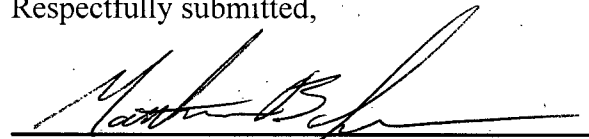
The issue before this Court as averred by the Appellant is that the probation violation judge erred in not awarding the time she served in Georgia prior to the plea. However, that issue was properly addressed at the plea when the sentencing judge checked the box granting her credit for pre-trial detention. (R.p.11-p.12). Consequently, the appellant's proper avenue to have her pre-trial detention applied to her sentence is to seek recourse within the Department of

Corrections. "The Defendant is to be given credit for time served pursuant to S.C. Code . §24-13-40 to be calculated and applied by the State Department of Corrections." (R.p.11-p.12).

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Appellant's appeal be dismissed.

Respectfully submitted,



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June 13, 2015

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



Matthew C. Buchanan
General Counsel

June 12, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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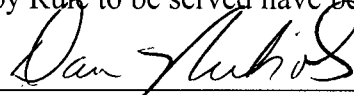
ANNETTA GRANT APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated June 12, 2015, on Appellant this 17th day of June, 2015, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Tiffany Butler, Appellate Defender
S.C. Commission on Indigent Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.



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